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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Atty. Docket No.: AUS000037US1

In re Application of:

MICHAEL WAYNE BROWN, ET AL.

Serial No.: 09/560,321

Examiner: CHEN, SHIN HON

Filed: April 28, 2000

Art Unit: 2131

For: ELECTRONIC RECIPE
MANAGEMENT§
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§APPEAL BRIEF UNDER 37 C.F.R. §1.192

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Alexandria, VA 22313-1450

Sir:

This Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 1-43 in the above-identified application. A Notice of Appeal was filed in this case on October 4, 2004 and received in the United States Patent and Trademark Office on October 8, 2004. Please charge the fee of \$340.00 due under 37 C.F.R. §1.17(c) for filing the brief, as well as any additional required fees, to **IBM Deposit Account No. 09-0447**.

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Typed or Printed Name: Shenise RamdeenDate: November 30, 2004Signature: 

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Appeal Brief

Serial No. 09/560,321

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REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 010773, frame 0649.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-43 stand finally rejected by the Examiner as noted in the Final Office Action dated June 9, 2004. The rejection of Claims 1-43 is appealed.

STATUS OF AMENDMENTS

No amendments have been submitted subsequent to the mailing of the Final Office Action dated June 9, 2004.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Professional chefs that develop award-winning dishes may attempt to profit from recipes for the dishes not only by preparing the dishes in a restaurant, but by publishing recipe books. However, distribution of recipes, once they are in print, is difficult to stop. Some restaurants are able to secure portions of recipes and profit from the creation of award-winning dishes by distributing sauces or other pre-packaged portions of a dish so that the purchaser may only add additional ingredients or cooking preparation. The present invention permits supermarkets and other food retailers to receive electronic recipes from a website that can be accessed and prepared only by the retailer to be purchased as pre-packaged ingredients from the supermarket. The portion of the website listing the recipe ingredients are not accessible by the consumers.

As explained in the present specification on page 4, line 12 *et seq.*, the present invention provides a website having encrypted ingredients for a particular electronic recipe, which may be

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decrypted only by a food retailer that intends to pre-package the encrypted ingredients. Instructions for preparing the electronic recipe utilizing the pre-packaged ingredients are accessible by a consumer, however.

As an additional feature, if a participating food retailer is not conveniently located, the consumer may transmit the encrypted ingredients to a food retailer more convenient for the user. The selected food retailer decrypts the encrypted ingredients utilizing a decryption key provided by the website and prepares a pre-package of the encrypted ingredients for the consumer to purchase. In this way, the electronic recipe remains confidential among food retailers and is not generally disseminated among the public such that anyone could then prepare the recipe.

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner's rejection of Claims 1-43 under 35 U.S.C. §103(a) as being unpatentable over *Dunaway, Jr.*, (U.S. Patent Application Publication No. 2002/20026363) in view of *Ichikawa, et al.* (PCT No. WO9820641) is to be reviewed on Appeal.

ARGUMENT

The rejection of Claims 1-43 under 35 U.S.C. §103(a) as being unpatentable over *Dunaway, Jr.*, (U.S. Patent Application Publication No. 2002/20026363) in view of *Ichikawa, et al.* (PCT No. WO9820641) is not well founded and it should be reversed.

As explained in the abstract of the specification, the preferred embodiment provides an electronic recipe management system that encrypts ingredients for a particular electronic recipe accessible at a particular website. A user accesses the particular recipe at the website and selects a food retailer to receive the encrypted ingredients so that the retailer can prepare a pre-package of the ingredients. The food retailer decrypts the encrypted ingredients and prepares the pre-packaged ingredients for the user.

A. *Dunaway* Fails to Suggest a Food Retailer Intends to Pre-package Encrypted Ingredients

With respect to exemplary Claim 1 in the present application, therein is recited the step of:

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encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site wherein said encrypted selection of ingredients are decryptable at a food retailer server system associated with a food retailer that intends to pre-package said encrypted selection of ingredients; and

It is argued on page 2-3 of the Final Office Action that *Dunaway* shows a food retailer server system for a food retailer that “intends to pre-package said encrypted selection of ingredients” in the summary of the invention and at paragraphs 60-67. However, *Dunaway* only describes an online data processing system to provide “remote culinary preparation services by personal chefs.” (paragraph 9). While *Dunaway* describes (1) a visitor website area to provide promotional information to potential clients, (2) a client website area to permit remote ordering of culinary preparation services, (3) a chef website area designed for individual chefs to obtain detailed information regarding assigned clients and (4) a manager website area designed to provide access to managers (see Summary of the Invention), nothing within the summary of the invention or in paragraphs 60-67 describes a “food retailer” that intends to “pre-package said encrypted selection of ingredients.” The only suggestion by the reference is that the chefs are going to prepare the recipes for the clients directly, not that they are pre-packaging the ingredients. While the “home grocery delivery service” provides a selection of ingredients, the only pre-packaged ingredient such a home online grocery service provides is those which the end user orders directly.

B. *Dunaway* Fails to Disclose Ingredients Not Accessible to the User

Exemplary Claim 1 in the present application further recites the step of:

transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with a particular user, such that said particular electronic recipe is distributed to said particular user where said encrypted selection of ingredients is not accessible to said particular user.”

Nothing within *Dunaway* contemplates transmitting encrypted ingredients to the online grocer of the user “where said encrypted selection of ingredients is not accessible to said particular user” as is recited in exemplary Claim 1. The website taught by *Dunaway* allows both customers and chefs to access food recipes and menus in order to permit food to be catered

directly to the user. Thus, the teaching of *Dunaway* clearly discloses and in fact requires the recipe ingredients be accessible by both the website users and the chefs, thereby allowing the user to evaluate or customize the recipe. (see para. 0012, 0061, 0063, 0064 ["By accessing the View Menu Ingredient List feature 714, the client may view a list containing all of the necessary ingredients for the week's menu." 0064]).

Moreover, the teaching of *Ichikawa* nowhere provides the missing suggestion or motivation of encrypting the selection of ingredients to not be accessible to the website user. *Ichikawa* merely describes a standard encryption system, without any particular context or application relating to food preparation, ingredients, or food delivery. Logically applying the teaching of *Ichikawa* to the teaching of *Dunaway* arrives at a combination of the prior art whereby the entire website is secured by encryption. This would suggest to someone of ordinary skill in the art that any authorized user would gain access to the entire website, including both the clients and the chefs. The combination as suggested by the Examiner proposes a website having common security such as password protected web pages. There is no suggestion within *Dunaway* or *Ichikawa* to hide the ingredients from the consumer once on the website. The Examiner's conclusion that the proposed combination of the references suggests the present invention results from improper hindsight of the present invention and not on any evidence of a suggestion in the prior art.

To support a prima facie case of obviousness, there must be some evidence based on the prior art that it would be obvious to permit general access to the recipe by all website users, but restrict access to the ingredients. The Examiner has failed to set forth such evidence. There is no suggestion in either *Dunaway* or *Ichikawa* of permitting chefs access to the recipe ingredients, while denying clients access to the recipe ingredients. In fact, applying the encryption of *Ichikawa* to the ingredients disclosed by *Dunaway's* website would defeat many of the advantages and methods taught by *Dunaway*. *Dunaway* teaches providing all recipe ingredient information to both the website user/consumer and the food preparer to permit the consumer to pick preferred ingredients and make modifications to recipes, while also permitting the food preparer to have the necessary information to prepare the requested foods. Consequently, Appellants respectfully submit that neither *Dunaway* nor *Ichikawa*, nor any combination thereof

provide any teaching or suggestion that would suggest modifying *Dunaway* in a manner suggested by the Examiner to arrive at the present invention.

Appellants respectfully note the Federal Circuit case law on this point. For example, see *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). "A showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular. . . . Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" "Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g. *C.R. Bard, Inc. v. M3 Sys., Inc.* ... (Fed. Cir. 1998); *In re Fritch* ... (Fed. Cir. 1992) (examiner can satisfy burden of obviousness in light of combination 'only by showing some objective teaching [leading to the combination]'); *In re Fine* ... (Fed. Cir. 1988) (evidence of teaching or suggestion 'essential' to avoid hindsight); *Ashland Oil, Inc. v. Delata Resins & Refractories, Inc.* ... (Fed. Cir. 1985) (district court's conclusion of obviousness was error when it 'did not elucidate any factual teachings, suggestions or incentives from this prior art that showed the propriety of combination')." *Id.* 994, 1614

"We do not 'pick and choose among the individual elements of assorted prior art references to recreate the claimed invention,' but rather, we look 'some teaching or suggestion the references to support their use in their particular claimed combination.'" *Symbol Technologies, Inc. v. Opticon, Inc.*, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991).

"Although a prior art device "may be capable of being modified to run the way [the patent applicant's] apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

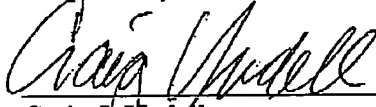
"However, the test of whether it would have been obvious to select specific teachings and combine them as did the Appellant must still be met by identification of some suggestion, teaching, or motivation in the prior art, arising from what the prior art would have taught a person of ordinary skill in the field of the invention." *In re Dance*, 160 F.3d 1339, 48 USPQ2d 1635 (Fed. Cir. 1998).

C. Conclusion

Appellants respectfully submit that there must be some motivation or suggestion to combine and modify *Dunaway* and *Ichikawa* in a way suggested by the Examiner to arrive at the present invention, and that the Examiner has failed to provide evidence thereof. Instead, Appellants respectfully submit that the Examiner has arrived at the present rejection based on hindsight of the present application. The present invention uniquely addressed and solved the problem of presenting recipes to consumers but keeping the ingredients of particular portions of the recipe confidential in order to enhance retailer food sales. The prior art neither contemplated the problem, nor provided any suggestion of a solution.

Appellants respectfully submit that neither *Dunaway*, nor *Ichikawa*, or any combination thereof, show or suggest the steps of encrypting ingredients to be decrypted by a *"food retailer server system associated with the food retailer that intends to pre-package said encrypted selection of ingredients"* and that further transmits an electronic recipe to a user that contains a portion that is encrypted *"such that said particular electronic recipes distributed to said particular user where said encrypted selection of ingredients is not accessible to said particular user,"* as is recited in exemplary Claim 1. Consequently, Appellants respectfully submit the rejection of Claim 1 in the present Application is not well founded and should be reversed. For the same reasons, Appellants respectfully submit that the rejection of the remaining pending claims in the present application are similarly not shown or suggested by the prior art and that the rejection of those claims should also be reversed.

Respectfully submitted,



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APPENDIX

1. A method for managing distribution of electronic recipes, said method comprising the steps of:

encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site wherein said encrypted selection of ingredients are decryptable at a food retailer server system associated with a food retailer that intends to pre-package said encrypted selection of ingredients; and

transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with a particular user, such that said particular electronic recipe is distributed to said particular user where said encrypted selection of ingredients is not accessible to said particular user.

2. The method for managing distribution of electronic recipes according to claim 1, said method further comprising the step of:

adjusting said particular electronic recipe for said particular user at said particular web site according to food preferences received for said particular user at said particular web site.

3. The method for managing distribution of electronic recipes according to claim 2, said step of adjusting said particular electronic recipe for said particular user according to food preferences further comprising the step of:

substituting ingredients in said particular electronic recipe.

4. The method for managing distribution of electronic recipes according to claim 2, said step of adjusting said particular electronic recipe for said particular user according to food preferences further comprising the step of:

adjusting amounts of ingredients included in said particular electronic recipe.

5. The method for managing distribution of electronic recipes according to claim 1, said method further comprising the step of:

requiring registration of said particular user prior to enabling access to said particular electronic recipe.

6. The method for managing distribution of electronic recipes according to claim 1, said method further comprising the step of:

requiring electronic payment by said particular user prior to enabling access to said particular electronic recipe.

7. The method for managing distribution of electronic recipes according to claim 1, said method further comprising the steps of:

receiving a request for a decryption key for said encrypted selection of ingredients from a particular food retailer;

comparing said particular food retailer with a list of allowable food retailers; and

only allowing access to said decryption key for said encrypted selection of ingredients to said particular food retailer in response to finding said particular food retailer in a plurality of allowable food retailers for said particular web site.

8. The method for managing distribution of electronic recipes according to claim 1, said step of encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site according to a particular user requesting said particular electronic recipe, further comprising the step of:

limiting a number of times that said encrypted selection of ingredients of said particular recipe is fillable for said particular user.

9. The method for managing distribution of electronic recipes according to claim 1, said step of transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with said particular user, further comprising the step of:

transmitting said instructions for preparing said electronic recipe and said encrypted selection of ingredients in an extensible mark-up language data format.

10. A system for managing distribution of electronic recipes, said system comprising:

means for encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site wherein said encrypted selection of ingredients are decryptable at a food retailer server system associated with a food retailer that intends to pre-package said encrypted selection of ingredients; and

means for transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with a particular user, such that said particular electronic recipe is distributed to said particular user where said encrypted selection of ingredients is not accessible to said particular user.

11. The system for managing distribution of electronic recipes according to claim 10, said system further comprising:

means for adjusting said particular electronic recipe for said particular user at said particular web site according to food preferences received for said particular user at said particular web site.

12. The system for managing distribution of electronic recipes according to claim 11, said means for adjusting said particular electronic recipe for said particular user according to food preferences further comprising:

means for substituting ingredients in said particular electronic recipe.

13. The system for managing distribution of electronic recipes according to claim 11, said means for adjusting said particular electronic recipe for said particular user according to food preferences further comprising:

means for adjusting amounts of ingredients included in said particular electronic recipe.

14. The system for managing distribution of electronic recipes according to claim 10, said system further comprising:

means for requiring registration of said particular user prior to enabling access to said particular electronic recipe.

15. The system for managing distribution of electronic recipes according to claim 10, said system further comprising:

means for requiring electronic payment by said particular user prior to enabling access to said particular electronic recipe.

16. The system for managing distribution of electronic recipes according to claim 10, said system further comprising:

means for receiving a request for a decryption key for said encrypted selection of ingredients from a particular food retailer;

means for comparing said particular food retailer with a list of allowable food retailers;
and

means for only allowing access to said decryption key for said encrypted selection of ingredients to said particular food retailer in response to finding said particular food retailer in a plurality of allowable food retailers for said particular web site.

17. The system for managing distribution of electronic recipes according to claim 10, said means for encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site, further comprising:

means for limiting a number of times that said encrypted selection of ingredients of said particular recipe is fillable for said particular user.

18. The system for managing distribution of electronic recipes according to claim 10, said means for transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with said particular user, further comprising:

means for transmitting said instructions for preparing said electronic recipe and said encrypted selection of ingredients in an extensible mark-up language data format.

19. A program for managing distribution of electronic recipes, residing on a computer usable medium having computer readable program code means, said program comprising:

means for encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site wherein said encrypted selection of ingredients are decryptable at a food retailer server system associated with a food retailer that intends to pre-package said encrypted selection of ingredients; and

means for transmitting instructions for preparing said electronic recipe and said encrypted selection of ingredients to a computer system associated with a particular user, such that said particular electronic recipe is distributed to said particular user where said encrypted selection of ingredients is not accessible to said particular user.

20. The program for managing distribution of electronic recipes according to claim 19, said program further comprising:

means for adjusting said particular electronic recipe for said particular user at said particular web site according to food preferences received for said particular user at said particular web site.

21. The program for managing distribution of electronic recipes according to claim 20, said program further comprising:

means for substituting ingredients in said particular electronic recipe.

22. The program for managing distribution of electronic recipes according to claim 20, said program further comprising:

means for adjusting amounts of ingredients included in said particular electronic recipe.

23. The program for managing distribution of electronic recipes according to claim 19, said program further comprising:

means for requiring registration of said particular user prior to enabling access to said particular electronic recipe.

24. The program for managing distribution of electronic recipes according to claim 19, said program further comprising:

means for requiring electronic payment by said particular user prior to enabling access to said particular electronic recipe.

25. The program for managing distribution of electronic recipes according to claim 19, said program further comprising:

means for receiving a request for a decryption key for said encrypted selection of ingredients from a particular food retailer;

means for comparing said particular food retailer with a list of allowable food retailers; and

means for only allowing access to said decryption key for said encrypted selection of ingredients to said particular food retailer in response to finding said particular food retailer in a plurality of allowable food retailers for said particular web site.

26. The program for managing distribution of electronic recipes according to claim 19, said means for encrypting a selection of ingredients of a particular electronic recipe accessible at a particular web site, further comprising:

means for limiting a number of times that said encrypted selection of ingredients of said particular recipe is fillable for said particular user.

27. The program for managing distribution of electronic recipes according to claim 19, said program further comprising:

means for transmitting said instructions for preparing said electronic recipe and said encrypted selection of ingredients in an extensible mark-up language data format.

28. A method for managing preparation for an electronic recipe, said method comprising the steps of:

receiving a particular recipe with instructions for preparing said particular recipe and encrypted ingredients for said particular recipe from a particular web site at a computer system associated with a particular user; and

transmitting said encrypted ingredients to a particular food retailer server system that is enabled to decrypt said ingredients and pre-package said decrypted ingredients, such that said

computer system manages requests for preparation of encrypted ingredients of an electronic recipe.

29. The method for managing preparation for an electronic recipe according to claim 28, said method further comprising the step of:

searching from a plurality of food retailer server systems for a food retailer that is enabled to decrypt said ingredients and pre-package said decrypted ingredients.

30. The method for managing preparation for an electronic recipe according to claim 28, said step of transmitting said encrypted ingredients to a particular food retailer server system further comprising the steps of:

adding said particular recipe to an electronic schedule for preparation; and

transmitting said encrypted ingredients to said particular food retailer server system according to said electronic schedule.

31. The method for managing preparation for an electronic recipe according to claim 28, said method further comprising the step of:

transmitting cooking instructions for said particular electronic recipe from said computer system to a particular cooking device that will cook said dish prepared from said particular electronic recipe.

32. The method for managing preparation for an electronic recipe according to claim 28, said method further comprising the step of:

transmitting food preferences for said particular user to said particular web site such that said particular recipe is specified for said particular user prior to transmittal from said particular web site to said computer system.

33. A system for managing preparation for an electronic recipe, said system comprising:

means for receiving a particular recipe with instructions for preparing said particular recipe and encrypted ingredients for a particular user for said particular recipe from a particular web site at a computer system associated with said particular user; and

means for transmitting said encrypted ingredients to a particular food retailer server system that is enabled to decrypt said ingredients and pre-package said decrypted ingredients, such that said computer system manages requests for preparation of encrypted ingredients of an electronic recipe.

34. The system for managing preparation for an electronic recipe according to claim 33, said system further comprising:

means for searching from a plurality of food retailer server systems for a food retailer that is enabled to decrypt said ingredients and pre-package said decrypted ingredients.

35. The system for managing preparation for an electronic recipe according to claim 33, said means for transmitting said encrypted ingredients to a particular food retailer server system further comprising the steps of:

means for adding said particular recipe to an electronic schedule for preparation; and

means for transmitting said encrypted ingredients to said particular food retailer server system according to said electronic schedule.

36. The system for managing preparation for an electronic recipe according to claim 33, said system further comprising:

means for transmitting cooking instructions for said particular electronic recipe from said computer system to a particular cooking device that will cook said dish prepared from said particular electronic recipe.

37. The system for managing preparation for an electronic recipe according to claim 33, said system further comprising:

means for transmitting food preferences for said particular user to said particular web site such that said particular recipe is specified for said particular user prior to transmittal from said particular web site to said computer system.

38. A method for managing preparation of a portion of a recipe, said method comprising the steps of:

receiving encrypted ingredients at a particular food retailer server system from a particular user for a recipe provided by a particular web site;

decrypting said encrypted ingredients with a decryption key received from said particular web site;

controlling pre-packaging of said decrypted ingredients at said particular food retailer for said particular user, such that said particular food retailer manages preparation of encrypted ingredients for a particular user.

39. The method for managing preparation of a portion of a recipe according to claim 38, said method further comprising the step of:

transmitting a request for said decryption key to said particular web site.

40. A system for managing preparation of a portion of a recipe, said system comprising:

means for receiving encrypted ingredients at a particular food retailer server system from a particular user for a recipe provided by a particular web site;

means for decrypting said encrypted ingredients with a decryption key received from said particular web site;

means for controlling pre-packaging of said decrypted ingredients at said particular food retailer for said particular user, such that said particular food retailer manages preparation of encrypted ingredients for a particular user.

41. The system for managing preparation of encrypted ingredients according to claim 40, said system further comprising:

means for transmitting a request for said decryption key to said particular web site.

42. A program for managing preparation of a portion of a recipe, residing on a computer usable medium having computer readable program code means, said program comprising:

means for receiving encrypted ingredients at a particular food retailer server system from a particular user for a recipe provided by a particular web site;

means for decrypting said encrypted ingredients with a decryption key received from said particular web site;

means for controlling pre-packaging of said decrypted ingredients at said particular food retailer for said particular user, such that said particular food retailer manages preparation of encrypted ingredients for a particular user.

43. The program for managing preparation of encrypted ingredients according to claim 42, said program further comprising:

means for transmitting a request for said decryption key to said particular web site.